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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION FIVE

THE PEOPLE,

Plaintiff and Respondent,

v.

EDWARD RODRIGUEZ GARCIA,

Defendant and Appellant.

A156606

(Marin County
Super. Ct. No. SC196006)

Edward Rodriguez Garcia (appellant) appeals following the revocation of probation and the imposition of sentence under Penal Code section 1203.2, subd.(a),¹ at which time the trial court imposed a consecutive term and denied appellant's Proposition 47 petition seeking to have his conviction for receiving a stolen vehicle under section 496d reduced to a misdemeanor. His court-appointed counsel has filed a brief raising no issues, but seeking our independent review of the record pursuant to *People v. Wende* (1979) 25 Cal.3d 436 (*Wende*) and *Anders v. California* (1967) 386 U.S. 738 (*Anders*). We find no arguable issues and affirm.

I. FACTS AND PROCEDURAL HISTORY

On February 10, 2016, in Marin County, appellant pled guilty to receiving a stolen vehicle in violation of section 496d. He agreed as part of his plea that he would be placed on probation for three years conditioned upon 120 days in custody, and would "waive 17(b)," the statutory provision that allows a court to reduce a "wobbler" offense

¹ Further statutory references are to the Penal Code unless otherwise indicated.

to a misdemeanor. Appellant was placed on probation consistent with the plea agreement.

On August 15, 2018, the Marin County Probation Department filed a notification with the court indicating that on May 30, 2018, appellant had been convicted of three felonies—sections 245, subdivision (b) and 4502, subdivision (a) and Vehicle Code section 10851, subdivision (a)—and had been sentenced by the Contra Costa County Superior Court to eight years in prison (actually eight years eight months). The notification also indicated the Probation Department had not received a request for sentencing by appellant or his counsel.

The court summarily revoked appellant’s probation on October 12, 2018, and on November 19, 2018, the Marin County District Attorney filed a motion for imposition of sentence pursuant to section 1203.2a. A hearing date was set and counsel for appellant filed a petition to treat the section 496d violation as a misdemeanor under section 1170.18.² A hearing was held February 13, 2019, at which point the court denied the petition under section 1170.18 and imposed an eight-month prison term consecutive to the term of eight years eight months that had been imposed in Contra Costa County, for a total term of nine years four months.

II. *DISCUSSION*

As required by *People v. Kelly* (2006) 40 Cal.4th 106, 124, we affirmatively note that appointed counsel has filed a *Wende/Anders* brief raising no issues, that appellant has been advised of his right to file a supplemental brief, and that appellant did not file such a brief. We have independently reviewed the entire record for potential error and find none.

The court complied with the provisions for revoking probation and imposing a prison sentence in the Marin County case after appellant was convicted of other charges

² Counsel checked the box for section 1170.18, subdivision (f), which applies to “[a] person who has completed his or her sentence for a conviction” The more appropriate subdivision was subdivision (a), which applies to a person “serving a sentence.”

and sentenced to prison in the Contra Costa County case. (See *In re Hoddinott* (1996) 12 Cal.4th 992, 999.) A consecutive term for that separate and unrelated charge was appropriate. (Cal. Rules of Court, rule 4.425(a)(1), (a)(3).) Appellant was not entitled to have his conviction for violating section 496d reduced to a misdemeanor because he pled guilty almost two years after Proposition 47 went into effect and he agreed as part of his plea agreement that the wobbler offense would be treated as a felony. Section 1170.18, subdivision (a) only applies to a defendant “who, on November 5, 2014, was serving a sentence for a conviction,” which appellant was not.

We are satisfied that appellant’s appointed attorney has fully complied with the responsibilities of appellate counsel and that no arguable issues exist. (*Smith v. Robbins* (2000) 528 U.S. 259, 283.)

III. *DISPOSITION*

The judgment is affirmed.

NEEDHAM, J.

We concur.

SIMONS, Acting P. J.

BURNS, J.